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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 470

SUSIE V. WATWOOD, *Petitioner*

v.

WILLIAM W. MORRISON and J. VIRGINIA MORRISON,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUSIE V. WATWOOD, *Petitioner pro se*
5112 MacArthur Boulevard, N.W.
Washington, D.C. 20016
Telephone 362-3246

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above entitled cause entered May 21, 1965 affirming the judgment of the United States District Court for the District of Columbia entered June 15, 1964 dismissing a suit for specific performance of a realty contract, and the judgment denying a new trial entered June 30, 1964.

OPINIONS BELOW

1. The judgment, without written opinion of the United States Court of Appeals is printed in the appendix, page 24.

2. The Opinion of the United States District Court for the District of Columbia is printed in the record (R 6) and is reported in _____. The order denying a new trial is printed in the record (R 23) and is reported in _____.

JURISDICTION

The judgment of the United States Court of Appeals, without written opinion, was entered May 21, 1965 (R 88) (Ap 24)

The jurisdiction of this Court rests on 28 U.S.C. Sec. 1254 (1). The jurisdiction of the United States Court of Appeals rests on 28 U.S.C. Sec. 1291.

QUESTIONS PRESENTED

Petitioner, pro se, appealed to the United States Court of Appeals for the District of Columbia from a judgment in equity in the United States District Court for the District of Columbia dismissing a suit for specific performance of an orally amended contract for the purchase of realty from which she was evicted after paying principal and interest in the amount of $1,610.00 on a trust under terms of a contract; made improvements valued at $2,139; and tendered $37,000.00 in full settlement of the purchase price and settlement charges; the respondents rejected tender, brought suit for eviction in non-equity jurisdiction Municipal Court (Now General Sessions Court) for the District of Columbia; got eviction, got judgment for $2,200.00 supersedeas cash bond on appeal; and judgment for $2,000.00 deposit note on contract, a total of $7,950.00, and the realty, from petitioner, raising the questions of res judicata, estoppel, and jurisdiction of the Municipal Court to grant judgment.

On the basis of the record the trial Court's opinion and judgment that "such an oral modification of the contract was not made, that even if such an oral agreement were established, it would be unenforceable under the Statute of Frauds"; that petitioner "never tendered full performance"; and that, "therefore, the defendants had a right to consider the contract of no further validity", cannot be supported in either law or fact.

During the oral hearing before the United States Court of Appeals petitioner was reciting what took place at the Title Company making settlement on December 3, 4, and 5, 1962 when the Court asked two questions: (1) *"Did you have counsel?", to which petitioner truthfully replied, "No, Sir." (2) "Miss Watwood, just what was the reason the deal fell through?", to which petitioner truthfully replied,

*During some proceedings petitioner had counsel. However, at the settlement of Dec. 3, 4, and 5, 1962 at the Title Company; at the trial of the Promissory note deposit in Mu. Ct.; the condemnation trial for the $2,200.00 cash supersedeas bond; motions, and in the appelate court actions petitioner acted pro se.

"Your Honor, the real reason is not in the record." **

Counsel for respondents stated, among other derogatory remarks about petitioner, "She had counsel. You just can't believe anything she says."

The Appellate Court affirmed the judgment without a written opinion. Petitioner is entitled to a written opinion and to judgment.

The federal question is: Whether the Appellate Court in affirming judgment without a written opinion failed to give due consideration and equal weight to questions of law, fact and evidence presented by appellant because she was acting pro se, when counsel for respondents made a personal attack upon the character and integrity of appellant by stating that "She had counsel. You just can't believe anything she says," and thereby denied her due process and equal protection as provided under the 14th Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are the following provisions of the Fourteenth Amendment of the United States Constitution . . . nor shall any state deprive any person of . . . property without due process of law, nor deny to any person equal protection of the law.

STATEMENT OF THE CASE

This is a case in equity. Petitioner brought suit in the United States District Court for the District of Columbia, for specific performance of an orally amended written contract for the purchase of realty (R 1)

At the trial of the merits on the 3, 4 and 5th of June, 1964, and with the motion for a new trial the following oral and documentary evidence was presented to the court:

Under terms of a purchase contract between petitioner and respondents dated November 14, 1961 (R 76) petitioner

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**Petitioner knows of no real reason for it. It is evident from the Court's question that it could find no reason in the record.

took possession of property 2848 Arizona Avenue, N.W., Washington, D.C. on November 29, 1961, made improvements valued at $2,139.00 on the buildings and grounds, and paid $1,610.00 on the first deed of trust prior to complete settlement and transfer to her by a deed in fee simple title to the property from the respondents.

The purchase price was $35,000.00 (R 76). Petitioner gave as a deposit a $2,000.00 promissory note (R 72) to be cancelled at date of settlement. Petitioner was to assume a 5¾% first trust of $25,000.00, pay $5,000.00 cash and give to the defendants a $5,000.00 second trust at 6% interest.

Settlement was to be on April 1, 1962, but by mutual agreement, and for the mutual benefit of both, the settlement date was extended to December 1, 1962. Petitioner's financing was arranged for that date.

Suddenly the respondents demanded a settlement on November 2, 1962 (R 46). Petitioner and respondent met at the District Title Insurance Company, where a tentative settlement was made to be finalized on or before December 3, 1962 (R 82) (R 13)

The deed to petitioner in fee simple title was signed by respondents, who also signed their settlement sheet (R 13). Petitioner signed the second deed of trust and trust note (R 19 & R 20) and settlement sheet (R 82). All five documents were, on November 2, 1962, left in escrow with Mr. William Knight, the settlement officer (R 52 & R 65).

Petitioner was to deliver the cash payment on December 3, 1962 (R 82). Respondents also were to deliver $1,104.00 cash to the title officer, Mr. Knight, to clear the title of numerous liens and to deliver the promissory note, also to him, for cancellation (R 13).

It developed that the sellers, respondents, did not have a 5¾% interest, $25,000.00 first trust for petitioner to assume (R 48), but a 6% construction loan, the balance of which shown on the settlement statement was $24,777.01 and the (R 82) actual balance of the trust as shown at the Building and Loan office records was $24,357.00 (R 48). This caused petition's settlement sheet to show cash required

to settle $6,256.54 instead of the contract down payment of $5,000.00. At the insistence of counsel for respondents the settlement sheet also showed a notation "Purchaser is to pay cash balance due hereunder on or before December 3, 1962. If not paid, then forfeiture of contract to be declared by sellers." The settlement sheet did not show the $1,610.00 paid on the trust by purchaser.

After the settlement sheet was signed, but before the parties left the Title Company (R 48) the question of petitioner, getting a new 5¾% loan of $25,000.00 or more, was discussed and agreed to.

Petitioner and respondent Morrison met on November 9, 1962 at the Liberty Savings and Loan Association (R 49) (R 69) where a $27,000.00 first trust at 5¾% interest was approved and the parties made an appointment to meet at the Title Company on December 3rd at 3:30 P.M. to finish and finalize the settlement. With this new loan the cash balance required from petitioner was $4,385.34 only (R 81) and the 2nd Trust was reduced to $4,950.00.

The Liberty Savings and Loan Association on November 28, 1962 delivered the $27,000.00 commitment with instructions (R 79) to the Title officer, Mr. Knight, to prepare the trust deed and trust note for $27,000.00 for the signature of petitioner. The trust officer already had in his possession the $5,000.00 second trust and trust note signed by petitioner (R 19 & R 20).

On December 3, 1962 petitioner delivered an assignment of $5,000.00 of funds due her, already in the hands of the Title Company, to Mr. Knight, the settlement offcer (R 78, R 15, and R 43). (This assignment was transferred from Mr. Knight to Mr. Wm. F. Reed to issue a check to be returned to Mr. Knight) and asked for the $27,000.00 deed of trust and trust note for her signature (R 50, R 17, R 18).

The respondents did not show and Mr. Knight refused to proceed with finalizing the settlement until respondents were present. He would not prepare the settlement sheet, nor permit petitioner to sign the trust deed and note.

Petitioner called the respondents from the title company

and was advised by them that they would be at the Title Company at nine o'clock on the morning of the 4th to finish the settlement.

Petitioner was present at the Title Company at nine o'clock on December 4th and endorsed the check prepared from the assignment of $5,000.00 delivered to the Title Company on December 3rd and returned it to Mr. Knight (R 21). The respondents did not show. Petitioner was informed by the appointment clerk that the respondents had made an appointment for eleven o'clock a.m. on December 5th (R 16). On December 5th petitioner was there, respondents were not (R 52).

At 11:20 a.m. Mr. Deckelbaum, counsel for the respondents came in, demanded and received from Mr. Knight, over petitioner's protest, the deed in fee simple which the defendants had signed (R 52) on November 2nd and left. After which, Mr. Knight proceeded to prepare the final settlement sheet (R 81), gave that, the trust deed and trust note for $27,000.00 to petitioner for her signature (R 17 and R 18) ,which petitioner signed and returned to Mr. Knight, who was also holding the $5,000.00 cash payment (R 62) from which he gave petitioner a refund of $614.66 (see marginal note—R 81).

On December 3, 1962 Mr. Knight of District Title Insurance Company had on his desk, in his possession, the deed of trust and trust note for $27,000.00 (R 79, R 62, R 17, R 18), the Liberty B. & L. Co. commitment, the deed in fee simple signed by the respondents, the second trust and trust note for $5,000.00 [the actual amount of this 2nd trust was $5,223.00 (R 13) (R 82)] (R 19 and R 20) signed by petitioner and the assignment of $5,000.00 cash (R 15, R 78), a total of $37,000.00 for petitioner to complete settlement of the $35,000.00 purchase and settlement charges. In fact an excess of $614.66 was due to be refunded to petitioner (R 81 footnote).

The respondents had not, according to Mr. Knight's statement at the time, delivered the $2,000.00 promissory note

for cancellation, although the cash was in Mr. Knight's possession for its payment.

Having led petitioner to believe since November 9th that the $27,000.00 trust was acceptable to them and with this $37,000.00 in the hands of the title company, respondents refused the tender and filed a suit in Municipal Court (now General Sessions Court) for the District of Columbia (Def. Ex. 4 Supp. Rec. on App. p. 1.) for eviction of petitioner (L & T 88371-62) and for judgment on the $2,000.00 deposit note on contract (Case No. M18,689-62- Def. Ex. 2 and 3- Supp. Record on Appeal, p. 1.) (R 56) (The records in these cases were introduced by respondents as evidence for res judicata pleas over petitioner's objections (R 56, R 57 and R 58).

Prior to these trials, in Municipal Court petitioner sought an injunction from the United States District Court (Case No. 17,533 Supp. Record on App.) to restrain the respondents from proceeding in the Municipal Court until the trial of the specific performance suit in U.S. District Court. This was denied January 11, 1963.

Petitioner appealed to the United States Court of Appeals for a restraining order (Case No. 17,533). Respondents filed an affidavit signed by settlement officer Mr. Knight, falsely stating that petitioner had not settled (Def. Ex. R Case No. 17,533). The restraining order was denied January 18, 1963.

Petitioner sought dismissal of the suit for eviction under Title 11, Section 704, D.C. Code, 1961 ed. for lack of jurisdiction. Again respondents used settlement officer Mr. Knight's false affidavit and the eviction was granted, without petitioner being permitted to testify, on January 28, 1963. Petitioner appealed to District of Columbia Court of Appeals (D.C. No. 3255) and was required to put up a $2,200.00 supersedeas bond. The judgment was affirmed July 12, 1963, reported in D.C. App. 193, AT 2nd 71. Petitioner requested a rehearing and a modification of the judgment (Supp. Rec. on App. D.C. Case No. 3255). The rehearing was denied July 30, 1963. Petitioner petitioned the United States Court of Appeals for a review, (Case No. 18,048,

Supp. Rec. on App.) on the basis that L & T Court had no jurisdiction under Sec. 11-704 or Sec. 11-738 to grant judgment of eviction on motion without trial of the merits and no jurisdiction to try the merits, and neither did the D.C. Court of Appeals have jurisdiction. The petition was denied October 1, 1963.

Respondents moved for judgment on the supersedeas bond of $2,200.00 (Supp. Rec. on App.). Petitioner opposed judgment, pleading that respondents had already received $5,750.00 in payments and improvements; that this would give them a total of $7,950.00 and that the Court lacked jurisdiction. Petitioner asked for an offset under Sec. 16-519, D.C. Code, 1961 ed. The Court held that section 15-519 of the Code does not permit a defendant in an L & T case to offset the value of improvements against plaintiffs' claim for assessment of damages under a supersedeas bond posted pending appeal of a judgment for possession, and granted judgment to respondents December 6, 1963 (Ap 30).

Petitioner sought dismissal of the $2,000.00 promissory note deposit suit in Municipal Court for lack of jurisdiction.

At the trial on the deposit note petitioner charged Mr. Knight, respondent Morrison and their Counsel Deckelbaum, with perjury before the Court (Def. Ex. 2 and 3, Case No. 18,689-62 and D.C. App. 3407, Supp. Rec. on App.).

Judge John Lewis Smith granted judgment to the respondents in an opinion entered October 11, 1963 (Ap 28) exonerating Knight, Morrison and Deckelbaum and finding that petitioner had refused to pay the note without justification. Judge Holtzoff, in the trial of the specific performance case held that this judgment was res judicata as to the $2,000.00 deposit only (R 72). (On January 15, 1964 respondents filed the Judgment in the United States District Court, Case No. M151-64. While the specific performance suit was in appeal, respondents filed suit for the sale of petitioner's realty 4913 MacArthur Blvd., N.W. to satisfy the judgment Case No. 2525-64, October 13, 1964, ran an attachment against petitioner's bank account, and harassed tenants at 4913 MacArthur Blvd. Petitioner lost over

$30,000.00 in business because of the personal attack against her, and much public embarrassment. Petitioner moved the court for judgment, or in the alternative to certify the record to the United States Court of Appeals for consideration with Case No. 18,966, this appeal, since this was one of the questions before the appellate court as to whether the judgment was void. The motion was denied November 20, 1964. Petitioner filed a motion (Case No. 19,033) in the Appellate Court to stay action on the suit to enforce judgment lien, pending Appellate hearing of Case No. 18,966 (Rule 62(g) and 62(h) and for release of lien against realty in exchange for a cash deposit in the Court of $2,500.00, pending action on the appeal. A temporary stay was granted, Order dated December 4, 1964. On January 13, 1965 the motion was denied. Petitioner moved for a rehearing January 19, 1965. This was denied February 12, 1965, without prejudice, after which Judge Jones, of the United States District Court granted respondents' motion for summary judgment April 4, 1965. Petitioner paid the judgment under protest to save property 4913 MacArthur Blvd.).

The trial Court refused to let petitioner state in her own words what (R 28) took place at the settlement, refused to hear all of petitioner's evidence (R 45), or to let her prove damages, or losses (R 45) (R 70), dismissed the suit for specific performance and assigned the cause to the Court Auditor to determine the amount, if any, of the principal of the payments made on the first trust and improvements made by petitioner.

The Court's entire findings are erroneous (R 6, 7, 8, 9), among its findings the finding that "as a fact that the plaintiff has not shown by a fair preponderance of the evidence that such an oral modification was made. Moreover, the Court also rules as a matter of law that even if such an oral agreement were established, it would be unenforceable under the Statute of Frauds, since an oral modification of a contract subject to the Statute of Frauds is not enforceable" (R 6 and R 7) and the Court's finding "on the basis of the foregoing facts, that the plaintiff, . . . never tendered

full performance; and that therefore, the defendants had a right to consider the contract of no further validity" (R 8) cannot be supported in either law or the facts of the record.

The Court's deafness, no doubt, prevented it from understanding much of the testimony given. His confusion of the facts is shown (Ap 27) when he asks, "Is there any proof in the record that when she arrived at the title company on Dec. 3rd that she had the money available?"

Mr. Reither (Counsel for petitioner at the time): Yes, she said that she had the money available. (Sec. R 52, R 79, R 62, R 17, R 18, R 19, R 15, R 78, R81, R 21, R 43.)

Mr. Deckelbaum (Counsel for respondents): No. Your Honor.

The Court: I do not recall any such testimony. . . . She accounted for $5,000.00. . . . But there was $6,000.00 more in cash to be paid. She had to pay the $2,000.00 note at the closing, did she not. . . . I shall rule that she had to have the $2,000.00 at the time of the closing (Ap. 27).

Mr. Reiter: It was understood that the $2,000.00 note was to be a part of the $5,000.00 to be paid on . . . (Ap. 27.)

The Court: "Well, there is evidence otherwise. . . . Well, she did not tender the money. (Ap. 27.)

Mr. Reiter: The fact was that nobody was there for the settlement. She made tender under the terms of the agreement, finally arrived at, under the $27,000.00 trust. If she did not make tender of the money, Your Honor, under the terms of the original understanding, it was because she had been led to believe that the $27,000.00 trust was acceptable to the defendants. The husband defendant even testified on the witness stand (R 69) that he had been at the Liberty Building Association on November 9th, the date that we established that Miss Watwood was in there talking with the Company. We showed the loan commitment on that basis. We established that the two of them were in the same office:

If we are going to invoke a strict rule in so far as the Statute of Frauds is concerned, I say that, in any event,

there has been a waiver of estoppel. . . . There has been (Ap. 28) a very good opinion on the part of the Court of Appeals of this circuit relating to the problem of the Statute of Frauds and the effect of placing a purchaser in possession and permitting the purchaser to make improvements and (R 204) to partially perform.

The Court: Yes, I think that you are right about that. That may take it out of the Statute of Frauds. What is Your Case?

Mr. Reiter: The case is *Faunce versus Woods, 55 U.S. App. D.C. 330, 5 F. 2d. 753.* This was an oral agreement to convey a piece of real estate, and the question was did the placing of the transferee in possession constitute an exception to the Statute of Frauds. the Court . . . refers to two Supreme Court Cases . . . first to the case of *Townsend* v. *Vanderwerker, 160, U.S. 171* where the Court spoke and said this: (R 205 & R 206)

> "Where the promissor does act pursuant to and in obvious reliance upon a verbal agreement which so changes the relations of the parties as to render a restoration of their former condition impracticable, it is virtual fraud upon the part of the promissor to set up the statute of frauds in defense."

The Court: "Yes, there are other cases in this jurisdiction . . . you brought the whole thing to my mind . . . which hold that part performance does take a contract out of the Statute of Frauds."

Every thing in the record shows that petitioner was ready, willing and able to perform and did perform. Throughout all proceedings counsel for respondents made derogatory remarks about petitioner, such as:

The Court: (R 26) It seems to me that some of these differences between the parties is a tempest in a teapot. If the plaintiff is in a position to go through, make the necessary payments, are you willing to convey the property to her?"

Deckelbaum: No, Your Honor . . . we are not willing to have to continue to deal with this plaintiff."

The Court: I can see that. (R 28) Sometimes personalities are very important in those matters. Some people don't want to deal with some others, and so on.

. . . . .

The Court, in holding that the $2,000.00 in Municipal Court for the note deposit judgment was res judicata (R 71 and 72) stated:

"What was forfeited was the $2,000.00, and I am not sure but that they may have to pay back the $2,000.00 if I decide that the plaintiff is not entitled to specific performance. . . .

Mr. Deckelbaum: The defendants have not received the $2,000.00; they only have a judgment. The Court: Oh, but they have a judgment. I may order cancellation of that judgment. . . ."

The next morning the Court said: "I gave some thought to the matter overnight. It seems to me that the right to forfeit the $2,000.00 deposit is res judicata. I think that the right under the contract may not be, but . . . but I thought afterwards that I am bound by it."

Mr. Reiter: Would the Court hear me . . . as to whether it (the deposit) is liquidated damages or a penalty, I found a Supreme Court case, which I would like to recite to the Court. . . . *Tayloe* v. *Sandiford,* found at Wheaton, or 20 U.S. Reports, page 13 . . . an opinion by Chief Justice Marshall. (R 73) "In general, a sum of money in gross, to be paid for the non-performance of an agreement, is considered as a penalty, the legal operation of which is, to cover the damages which the party, in whose favor the stipulation is made, may have sustained from the breach of the contract by the opposite party. It will not of course be considered as liquidated damages; and it will be incumbent on the party who claims them as such, to show that they were so considered by the contracting parties."

Judgment was entered June 15, 1964.

Petitioner moved for a new trial (R 10) with supporting affidavits and documents (R 13, 14, 15, 16, 17, 18, 19, 20, 21). An order denying a new trial was entered June 30, 1964. (R 23)

Petitioner appealed July 29, 1964 to the United States Court of Appeals citing the following questions: (R 24)

1.

The question is whether the Court's findings:
(a) as a fact that an oral modification to the contract was not made; (b) as a matter of law that if such an oral modification were established, it would be unenforceable under the statute of frauds; and (c) that plaintiff never tendered full performance, is incapable of being supported by the law and the evidence.

2.

The question is whether, having permitted partial performance by placing purchaser in possession of realty under a written contract, accepting payments on the purchase money trust under the terms of the written contract, and, under the oral modification, continning to accept such payments, permitting purchaser to make improvements, and to place a larger first trust for the purpose of final settlement, the sellers can, after purchaser has tendered full performance under the terms of the modified contract, reject such tender by pleading the statute of frauds to defeat the transfer of title, evict purchaser and retain the deposit.

3.

The question is: (1) Whether the judgments for (a) eviction of purchaser; (b) condemnation of cash supersedeas bond of $2,200.00; and (c) deposit note of $2,000.00 judgment obtained in the General Sessions Court for the District of Columbia are void, and

(2) Whether the trial court, being the first court of equity jurisdiction (a) should have admitted the General Sessions Courts and the D.C. Court of Appeals records, findings of facts and judgments as evidence; (b) erroneously ruled during the trial that said proceedings was res judicata as to the $2,000.00 deposit judgment; and (c) erred in not

making findings of facts and conclusions of law as to res judicata of the inferior Court's proceedings, and,

(3) Whether plaintiff has been (a) denied due process and equal protection of the law; (b) suffered irreparable damages and loss.

After petitioner noted an appeal the Court Auditor held a hearing but refused to submit his findings before the record was taken up on appeal. After notice that oral hearing on appeal was set for April 14, 1965 the Auditor reported his findings. Because they were unfair and erroneous petitioner moved (April 10, 1965) the Appellate Court to restrain the Court Auditor from further proceedings in the court below pending action on the appeal. (R 83 & R 84.) On May 3, 1965 the motion was denied (R 87) (Ap. 25, 26). The Auditor's reports was filed April 16, 1965 (Ap. 26) in trial court, allowing petitioner $380.92 payments on principal of the first trust and $135.40 on permanent improvements—Total $516.32 less audit cost of $100.00, a net of $416.32.

Petitioner moved the court to strike the audit report as a farce, etc. . . . that the auditor has shown bias, prejudice, sarcasm, and an ignorance of the basic principles of cost accounting. The motion was heard on Thursday, May 13th, the day before the oral hearing on the appeal. Judge Youngdahl of the trial court dismissed the motion as scandalous and charged petitioner with contempt of court.

In summary; the Courts awarded respondents the realty plus a total of $7,950.00 with interest and costs. The Courts awarded petitioner $516,32 less $100.00 cost. Equitable justice?

Petitioner, in her brief before the appellate court contended that as to her performance of the contract all oral modifications of the contract were affirmed in the written settlement sheet of November 2nd, 1962, that, on that date:

(a) All parties signed the settlement statements; (b) title to the property was transferred to the plaintiff, by the signatures of the defendants on the deed, in fee simple; (c) plaintiff executed the 2nd deed of trust and trust note to

the defendants; (d) plaintiff assumed the first trust on the property; (e) plaintiff had already paid $1,610.00 on the property; (f) plaintiff had already done substantial improvements on the property; (g) plaintiff was in physical possession of the property; (h) plaintiff was now the owner of the property; but the title was still cloudy by debts of $7,361.26 of the former owner, the defendant; (i) plaintiff's settlement sheet showed that she had to turn over to the title officer $6,256.54 of this amount and the defendants' settlement sheet showed that they had to turn over the balance of $1,104.72 to the title officer before these liens against the title (Note: $6,730.00 old 2nd trust and interest) could be removed from the record. (R 13 and R 82.) (The defendants were not receiving any cash from this transaction, only the 2nd trust executed by the plaintiff.) Both parties had to deliver this money to the title officer on or before December 3rd. (j) Plaintiff's settlement sheet (R 82) also had this notation: "No cash deposit $2,000.00 note only" and this note was to be delivered by the defendant to the title officer for cancellation on or before December 3rd.

After the above papers were signed the oral agreement between the parties to have the interest on the first trust reduced from 6% to 5¾% and to get a $27,000.00 trust to replace the construction loan was not a modification of the contract of purchase.

The last oral agreement between the parties was purely one of refinancing whereby the defendants agreed to subordinate his 2nd trust to a new first trust of $27,000.00 in consideration of the plaintiff paying the defendant $273.00 on the 2nd trust, $150 on office rent and $137.64 advance payment on real estate tax. (R 81.)

Plaintiff contended that she fully performed the terms of the (R 52) contract, that the contract was never subject to the Statute of Frauds, but that if it were, the defendants are estopped from declaring a forfeiture by reason of having led the plaintiff to believe that they would subordinate the 2nd trust to a new first trust; that they waited from the 3rd to the 5th of December, two days after plaintiff had

fully performed under the terms whereby she delivered the cash balance on December 3rd, and even then did not tell her that they were forfeiting because of the refinancing. Petitioner averred that the defendants illegally removed the Deed to title from the title company on December 5th and that this act constitutes a fraud or the perpetration of a fraud, in that the title no longer rested in the defendants, but the plaintiff. *Kresge* v. *Crowley 47 App. D.C.:*

> "Where one of two contracting parties has been induced or allowed to alter his position on the faith of a contract within the statute, to such an extent that it would be fraud on the part of the other party to set up its invalidity, courts of equity hold that the clear proof of the contract and the acts of part performance will take the case out of the operation of the statute, if the acts of part performance were clearly such as to show that they are properly referable to the parol agreement."

Under the Statute of Frauds, 12-301, D.C. Code, 1961 ed. an estate in lands, tenements, or hereditaments can be created by parol for a period of one year. The British Statute of Frauds (29 Car. 2nd c 3) referenced under the D.C. Code, and from which the D.C. Statute, through the Maryland Statute, derives, did not provide this one year, or for any period, for establishing an estate in parol. The trial court ignored the D.C. Statute altogether and jumped over into Maryland to find a statute. The cases cited by the Court in its opinion cover realty leases for several years duration.

An oral agreement creating an estate in land which has been carried into effect is valid. *Mars v. Spanos,* 1944, 139 F. 2nd, 369, 78 U.S. App. D.C. 230.

Under 12-302.20 D.C. Code, 1961 ed. An agreement which is capable, possible or susceptible of performance within one year is not within the Statute of Frauds. Id. *Snyder* v. *Hillegrist, et al* 246 F. 2nd 649, 100 U.S. App. D.C. 368; *Jacobsen* v. *Sweeney,* 103 F. Supp. 393, 202 F. 2d. 461, 92, U.S. App. D.C. 93, an oral modification of a written real

estate contract was upheld; *Carman* v. *Harrah,* 170 S.W. Reporter, 388, a Missouri Case, reiterates the rule stated by Lord Denman, Chief Justice.

Petitioner averred that the proceedings in the Municipal Court, General Sessions Court, and D.C. Court of Appeals are illegal, void and of no validity under D.C. Code, 1961 ed. Sec. 11-704, Sec. 11-738 and Sec. 16-507. That since the act of February 22, 1897, 14 Stat. 401 Sec. 1, and every succeeding amendment to, or change in the Act's structure has contained the "no jurisdiction" clause where title to realty is concerned, and that the Appellate Court had the power to, under Rule 60(b) FRCP to set aside these judgments where justice so required.

Dansuel v. *Dansuel* 195 F. 2d. 774, 90 U.S. App. D.C. 275: *Rood Refining Co.* v. *Universal Oil Products Co.* CA 3rd 169 F 2d. 514, 69 S Ct. 481, 335, U.S. 912, 93 L. Ed. 444.

During the oral hearings before the Appellate Court, petitioner was telling the Court what took place at the Title Company making settlement on December 3, 4, and 5, 1962, when the Court asked two questions: (1) "Did you have counsel?" to which petitioner truthfully replied, "No, Sir." (2) "Miss Watwood, just what was the reason the deal fell through?" To which petitioner truthfully replied, "Your Honor, the real reason is not in the record."

Counsel for respondents stated, among other derogatory remarks about petitioner, "She had Counsel. You just can't believe anything she says."

The Appellate Court affirmed the judgment without a written opinion. Petitioner is entitled to a written opinion and to judgment.

STATUTES AND RULES INVOLVED

1. 28 U.S.C. Sec. 1254(1) "Cases in the Courts of Appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

2. Section 11-704, D.C. Code, 1961 ed. "The said jurisdiction of the Municipal Court shall extend to cases of trespass upon or injury to real estate: Provided, That if the defendant shall file with the court an affidavit that he claims title, or acts under a person claiming title, to the real estate, setting forth the nature of his title, the Court will take no further cognizance of the case. (Mar. 3, 1901, 31 Stat. 1191, ch. 854 Sec. 10; Feb. 17, 1909, 35 Stat. 623, ch. 134)"
3. Section 11-738—D.C. Code, 1961 ed. "Forceable entry and detainer—plea of title—undertaking . . . the court shall certify the proceedings to the United States District Court for the District of Columbia, and the same shall be further continued in that court."
4. Section 12-301, D.C. Code, 1961 ed. "Every estate in lands, tenements or hereditaments for a greater term than one year attempted to be created by parol, or otherwise than by deed, shall be an estate by sufferance (Mar. 3, 1901, 31 Stat. 1367, ch. 854 Sec. 1116)."
5. The British Statute of Frauds, ref. under the above statute (29 Car. 2d. c. 3) provides that: "No leases, estates, or interests, either of freehold, or terms of years, or any uncertain interests, not being copyhold, or customary interest, of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, shall be assigned, granted, or surrendered, unless it be by deed or note in writing . . ."
6. Section 12-302, D.C. Code, 1961 ed. "No action shall be brought . . . upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, which need not state the consideration, and signed by the party to be therewith, or to some other person thereunto by him lawfully authorized. (Mar. 3, 1901, 31 Stat. 1367 ch. 854 sec. 1117)."
7. Section 16-519, D.C. Code, 1961 ed. "If at any time be-

fore the trial the defendant shall give notice that if the verdict of the jury shall be in favor of the plaintiff's title the defendant will claim the benefit of permanent improvements that may have been placed on the property by the defendant, etc." (Mar. 3, 1901, 31 Stat. 1349 ch. 854 Sec. 1003; June 30, 1902, 32 Stat. 538 ch. 1329.)

8. Section 16-507, D.C. Code, 1961 ed. "Where real property has been sold under a written contract executed by the vendor, and there has been such a performance of its terms by the vendee as would entitle him to a decree in equity for a conveyance of the legal title, without condition, such vendor shall not be entitled at law, any more than in equity, to recover said property from the vendee." (Mar. 3, 1901, 31 Stat. 1348, ch. 854, sec. 990.)

9. Act of Feb. 22, 1897, 14 State. 401, Sec. 1. ———

10. Rule 60 (b) (6) "Upon motion and upon such terms that are just, the Court may relieve a party . . . from a final judgment, order or proceeding for . . . any reason justifying relief from the operation of the judgment. . . . This rule does not limit the power of a court to set aside a judgment for fraud upon the court."

REASONS FOR GRANTING THE WRIT

This case presents an important question involving the fair and equitable adjudication of the merits of a case before the Court where the party for one side has counsel and the other party acts pro se.

The question is not that one party had counsel and the other party did not have counsel. The question is, did the Appellate Court weigh the issues presented with dignity and sincerity by appellant pro se, with the same judicious scrutiny and scrupulous sincerity that it would have had the issues been presented by counsel. (Note: The order of May 21, 1965 affirming the judgment of the trial court states —"and was argued by Counsel." The court takes no cognizance of petitioner arguing pro se.)

Did it weigh the law, the facts and the documentary evidence in the record submitted by appellant pro se on the scales of justice with the same scrupulous judgment it gave to the opposition statements made by Counsel for the appellee? Or, did the Appellate Court, as a result of the statements made by counsel (an officer of the Court) for appellees, that, "She had counsel. You just can't believe any thing she says," assume that appellant was unworthy of being believed, and proceed no further in its examination of the law, the facts and the documentary evidence presented in the record and in appellant's brief?

It is clear that the Court, from its questions, "Did you have counsel?" and "Miss Watwood, just what was the reason the deal fell through?", found no reason in the record for the actions of the appellees in refusing to perform.

Is it not the duty of the Court, where one party is appearing pro se to require that counsel for the opposing party respect the dignity of the person appearing pro se? Shouldn't counsel for the opposing party in such instances, be required to defend his position on the basis of the law and the facts, not by character assassination of the party pro se?

There are many reasons why persons appear in court without counsel. They may not be able to pay counsel, or to secure counsel, or to secure competent counsel. Incompetent counsel is worse than no counsel.

The 14th Amendment to the United States Constitution does not say that a person has to have counsel in order to receive "due process of law", or "equitable justice under law." It merely guarantees "due process" and "equal justice under law."

Only too often does the Court ignore these guarantees of "due process" and "equal justice under law" to persons appearing pro se before it.

True, the appearance of a person without counsel places an extra burden upon the Court, but no person should accept appointment and take the oath required of that high office is he were not willing to accept this extra burden.

Therefore, does it not behoove the Court to examine with closer scrutiny the law, facts and evidence before it; to eliminate the unfair advantage taken, and miserpresentations by counsel for the opposing party; and to give due process of law and equal justice under law to persons appearing pro se?

CONCLUSIONS

From the record, the law, the evidence, and the circumstances of this case, petitioner has been denied due process of law and equal justice under law. She is entitled to a written opinion and judgment in her favor.

The question presented here has never been decided before by this Court. Because of the large number of persons appearing pro se before the various Courts in the United States, the denial to them of due process and equal justice under law, and the great need for a rule of law on this question the matter is of national interest.

Wherefore, petitioner prays that this petition for a writ of certiorari be granted.

Respectfully submitted

SUSIE V. WATWOOD, *pro se*
5112 MacArthur Boulevard, N.W.
Washnigton, D.C. 20016
Telephone 362-3246

APPENDIX

Filed May 21, 1965

JUDGMENT

This case came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel; and appellant having filed her action in the District Court seeking specific performance of a contract to convey certain real estate; the District Court having entered its order dismissing the complaint but with provision that the appellant recover from the appellee the value of permanent improvements if any placed by her at the premises in suit and that the appellant further recover payments made by her on account of curtailment of the principal under the first deed of trust on said property from November 29, 1962, to the date when

appellant was dispossessed pursuant to court order; and appellant having brought this appeal;

Now, upon consideration of the briefs, the oral argument and the record herein, and it not having been made to appear that the findings of the District Judge are clearly erroneous;

It is ORDERED and ADJUDGED by this court that the judgment of the District Court is affirmed.

It is further ORDERED by the court that appellees herein recover from appellant their taxable costs on this appeal, and have execution therefor.

Per Curiam.

FILED APR. 10, 1965

MOTION TO RESTRAIN THE COURT AUDITOR FROM FURTHER PROCEEDINGS IN THE COURT BELOW IN REFERENCED CAUSE PENDING THIS APPEAL.

Appellant moves the Court to restrain the Court Auditor from further proceedings in the court below in Case No. 4025-62 which is now on appeal in this court in the above referenced case.

This motion is made because every effort is made by appellees and their counsel to defeat the ends of justice by piecemeal decisions in the Courts below. Appellant is entitled to have this appeal heard without the handicap of miscellaneous proceedings in the trial court pending this appeal.

Respectfully submitted
SUSIE V. WATWOOD, *pro se*

FILED APR. 20, 1965

MEMORANDUM IN OPPOSITION TO APPELLANT'S MOTION TO RESTRAIN COURT AUDITOR, ETC.

Comes now the aforesaid Appellees, by and through their attorney, Nelson Deckelbaum, and in opposition to Appellant's motion to restrain the Court auditor, etc., states to

the Court that the record of the Court below reflects that the Deputy Auditor filed his report on April 16, 1965, and that, consequently, any issues raised by Appellant's motion are now moot.

Respectfully submitted,
NELSON DECKELBAU

FILED MAY 3, 1965

ORDER

On consideration of appellant's motion to restrain the court auditor, it is

ORDERED by the court that appellant's aforesaid motion is denied.

Per Curiam.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED APRIL 16, 1965

REPORT OF THE DEPUTY AUDITOR
CONCLUSIONS OF LAW

In consideration of the testimony adduced at the hearing and data supplied, and considering the findings as set forth above, the Deputy Auditor concludes that the plaintiff is entitled to recover from the defendants herein, the total sum of $516.32, representing curtailments in the amount of $380.92, as set forth above, and permanent improvements in the amount of $135.40, as set forth above, and that said total amount of $516.32 constitute a lien against the real estate located at 2848 Arizona Avenue, Northwest, Washington, D.C., until paid, pursuant to the Court's judgment entered herein on June 15, 1964.

2. The Deputy Auditor makes a charge of $200.00 for executing the Order of Reference, the holding of a hearing and for this Report to the Court, including $78.75 cost of transcript of the proceedings, of which charge $100.00 has been paid ($50.00 by the plaintiff and $50.00 by the defendants), leaving a balance of $100.00 to be paid, $50.00 by the

plaintiff, Susie V. Watwood, and $50.00 by the defendants, William W. Morrison and J. Virginia Morrison.

JAMES B. LYNN

ADDITIONAL EXCERPTS FROM THE RECORDS

The Court: Is there any proof in the record that when she arrived at the title Company office on December 3rd that she had the money available?

Mr. Reiter: Yes, she said she had the money available.

Mr. Deckelbaum: No, Your Honor.

The Court: I do not recall any such testimony. . . . She accounted for $5,000.00. . . . But then there was $6,000.00 more in cash to be paid, was there not? . . . She had to pay the $2,000.00 note at the closing, did she not? . . . I shall rule that she had to have the $2,000.00 at the time of closing.

Mr. Reiter: It was understood that the $2,000.00 note was to be part of the $5,000.00 to be paid on—

The Court: Well, there is evidence otherwise. . . . Well, she did not tender the money.

MR. REITER: The fact was that nobody was there for the settlement. She made tender under the terms of the agreement as it was finally arrived at, under the $27,000.00 trust. If she did not make tender of the money, Your Honor, under the terms of the original understanding, it was because she had been led to believe that the $27,000.00 trust was acceptable to the defendants.

The husband-defendant even testified on the witness stand that he had been at the Liberty Building Association on November 9th, the date that we established that Miss Watwood was in there talking with the company. We showed the loan commitment on that basis. We established that the two of them were in the same office.

I think that at least if we are to deprive a purchaser of the rights under a contract, it should be established that the other party has clean hands on this. It was only a question as to whether she was to get a $25,000.00 or a $27,000.00

trust. She could do either on or after December 3rd, the date set here.

If we are going to invoke a strict rule in so far as the Statute of Frauds is concerned, I say that, in any event, there has been a waiver of estoppel. It has been established by uncontradicted evidence that she was there on the 3rd; that when the defendants did not show up on the 3rd, she set a settlement for the 4th. She appeared on the 4th. They did not appear on the 4th. Then it was set for the 5th. She appeared on the 5th. Mr. Deckelbaum's only appearance was to come in and ask for the deed back. Thereafter she went to see counsel, Mr. Jackson, for the title company in an attempt to work out a settlement. Under circumstances like this, where there has been such good faith on her part established, is she to be deprived, not only to the right to the property itself under the contract—and there could be nothing lost to the defendant by conveying the contract in accordance with the original understanding that she is prepared to go through with—is she to be deprived of the possession of the property and the title to the property? Is she to be deprived of the $2,000.00 when, according to the uncontradicted evidence, this was not her fault? There has been no evidence put in by the defendants to contradict any of this. If there had been, I think that the Court could find differently. It has all been uncontradicted. I don't know why there was no testimony on the part of the defendants, but there was none.

The evidence is that she was able to settle, ready to settle, and she appeared three times for settlement.

DISTRICT OF COLUMBIA
COURT OF GENERAL SESSIONS
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came before the court, sitting without a jury, on September 24, 1963. Upon the conclusion of the trial, the court took the case under advisement. After considera-

tion of all the evidence adduced by the parties, the court makes the following findings of fact and conclusions of law.

Findings of Fact

1. That Defendant, Susie V. Watwood, executed a promissory note dated November 29, 1961, payable to William W. Morrison, in the sum of Two Thousand ($2,000.00) Dollars. (Plaintiff's exhibit #1)

2. That said note was a deposit to be applied as part payment for the purchase of the premises 2848 Arizona Avenue, N.W., Washington, D.C., pursuant to a sales agreement dated November 14, 1961. (Defendant's exhibit #1)

3. That the aforementioned note was due and payable on April 1, 1962; that the oral agreement between plaintiff and defendant subsequent to the signing of the note was only an agreement by the plaintiff, without consideration on the part of the defendant, not to resort to his legal remedies to enforce payment of the note until December 3, 1962.

4. That the terms contained in the settlement sheets dated November 2, 1962, which included the $2,000 note as part of the settlement, were agreed to by both parties (Defendant's exhibits #4 and #5); and that at no time did the plaintiff assent to the terms contained in the settlement sheet dated December 5, 1962. (Defendant's exhibit #3)

5. That the defendant failed to pay, and has not yet paid, the promissory note.

6. That there was no conspiracy or collusion as alleged by defendant between plaintiff's attorney and representatives of the title company, either acting for themselves or acting as agents for the plaintiff, to cause the defendant to be in default on the payment of the note.

Conclusions of Law

Defendant, Susie V. Watwood, is in default on the payment of the promissory note without justification.

Accordingly, a trial finding shall be entered for the plain-

tiff against the defendant in the amount of $2,000.00 with 6% interest from date of judgment.

Appropriate entry will be made as of September 27, 1963.

JOHN LEWIS SMITH, JR.

Dated: September 26, 1963

MEMORANDUM

The Court is of the opinion that § 15-519, D.C. Code (1961 Edition) does not permit a defendant in a Landlord and Tenant case to set off the value of improvements against a plaintiff's claim for assessment of damages under a supersedeas bond posted pending appeal of a judgment for possession.

The plaintiffs' motion to assess damages against the supersedeas bond is granted in the amount of $2,200.

DEWITT S. HYDE, *Judge*

December 6, 1963